

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JAMES A. HOWARD,**

**Defendant.**

**8:06CR384**

**ORDER**

This matter is before the Court on the Defendant's Notice of Appeal, ECF No. 352, and the Clerk's memorandum addressing the Defendant's ability to proceed on appeal in forma pauperis, ECF No. 353. The Defendant seeks to appeal from the Memorandum and Order, ECF 351, denying his Motion to Reduce Sentence Under Section 404 of the First Step Act, ECF No. 349.

The Defendant's Motion was not presented as one under 28 U.S.C. § 2255, and accordingly no order issuing or denying a certificate of appealability was issued. Requests for reductions of sentences pursuant to Section 404 of the First Step Act are pursuant to 18 U.S.C. § 3582(c)(1)(B) and are discretionary. See First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), at § 404(c) ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.").

The Defendant's Motion to Reduce Sentence Under Section 404 of the First Step Act was found to be without merit and was denied for the reasons set out in the Court's Memorandum and Order, ECF No. 351. The undersigned responded to the Clerk's memorandum by stating "[a] separate order or further proceedings will be required to address the defendant's authorization to proceed in forma pauperis." ECF No. 354.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that “[a] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization[.]” The Court previously found, based on his financial affidavit, that the Defendant was eligible for appointment of counsel, ECF No. 74, and the Defendant’s counsel represented in the Notice of Appeal that his financial status warrants appointment of counsel on appeal, ECF No. 352, Page ID 1186. Therefore, the Court finds that the Defendant is eligible to proceed on appeal in forma pauperis without further authorization under Rule 24(a)(3).

IT IS ORDERED: The Defendant, James A. Howard, may proceed on appeal in forma pauperis without further authorization under Rule 24(a)(3) of the Federal Rules of Appellate Procedure.

Dated this 17<sup>th</sup> day of July 2019.

BY THE COURT:

s/Laurie Smith Camp  
Senior United States District Judge